UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ERIC YERKES	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. ___________
v.	:	
	:	**Jury Trial Demanded**
ANAPOL WEISS	:	
Defendant.	:	
	:	

COMPLAINT

Plaintiff, Eric Yerkes, by and through his undersigned counsel, hereby files this civil complaint, and in support thereof, avers as follows:

Nature of the Action

1. This is a professional malpractice action against the law firm that represented Plaintiff in a personal injury matter that settled in 1986 via a structured annuity that was represented to Plaintiff by his counsel, the Defendant, as providing "guaranteed" periodic payments for the remainder of Plaintiff's lifetime.

2. Plaintiff has recently discovered that the representations of the Defendant that payments were guaranteed were false and the payments he was promised that induced his signing of the settlement agreement have been reduced by more than half.

Jurisdiction and Venue

3. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332 as there is complete diversity of citizenship between the Plaintiff and the Defendant and the amount in controversy is in excess of $75,000. As stated below, Plaintiff is a citizen of New Jersey while the Defendant is a citizen of Pennsylvania.

4. Venue is proper in this District under and pursuant to 18 U.S.C. § 1965, and pursuant to 28 U.S.C. § 1391, in that a substantial part of the events giving rise to the claims alleged in this Complaint occurred in this District and the Defendant maintains a place of business in this District.

The Parties

5. Plaintiff, Eric Yerkes, is an individual and citizen of the state of New Jersey residing at 21 Jacqueline Place, Sewell, New Jersey 08080. Plaintiff is and was at all times relevant hereto a citizen of the state of New Jersey.

6. Defendant Anapol Weiss is a Pennsylvania professional corporation engaged in the field of legal services with its principal place of business located at 130 N. 18th St., Suite 1600, Philadelphia, Pennsylvania 19103. While headquartered in Pennsylvania, Anapol Weiss also maintains an office at 1040 N. Kings Highway, Cherry Hill, New Jersey 08034.

Background Facts

7. On August 18, 1981, at the age of 16, Plaintiff and his brother were involved in a plane crash that occurred near the Grand Canyon in Arizona.

8. Plaintiff suffered severe and permanent injuries as a result of the crash. So did his brother.

9. The plane in which Plaintiff was traveling was manufactured by Cessna Aircraft Company and was being operated by Grand Canyon Airways, Inc.

10. Plaintiff retained the services of Paul R. Anapol, Esq. and his law firm, then known as Anapol, Schwartz, Weiss and Schwartz, P.C., to assist in bringing a claim against Cessna and Grand Canyon Airways. Anapol, Schwartz, Weiss and Schwartz, P.C. is currently known as Anapol Weiss.

11. Plaintiff was provided with Anapol's information by his brother, whose business Anapol solicited in New Jersey.

12. In retaining Plaintiff as a client, the Defendant sent an engagement letter to Plaintiff and his mother at their New Jersey residence which Plaintiff's mother agreed to on behalf of Plaintiff.

13. During the course of the Defendant's representation of Plaintiff, the Defendant communicated with Plaintiff by sending mail and placing phone calls to his home in New Jersey.

14. With the assistance of the Defendant, Plaintiff brought a lawsuit against Cessna and Grand Canyon Airways in the United States District Court for the District of Arizona, Docket No. CV-83-01616-PHX-WPC for the injuries he sustained in the crash.

15. On or about April 6, 1984, on the advice of the Defendant, Plaintiff settled his claim with Grand Canyon Airways. The Defendant represented Plaintiff in connection with the settlement.

16. Thereafter, on or about April 1, 1986, Plaintiff entered into a Release and Indemnity Agreement and Assignment Agreement with Cessna (the "Cessna Settlement Agreement") that yielded Plaintiff a cash payment of $125,000 and periodic payments consisting of $1,000 a month for life and the following lump sum payments (the "Periodic Payments"):

$ 25,000 payable in 5 years (February 1991)
$ 40,000 payable in 10 years (February 1996)
$ 70,000 payable in 15 years (February 2001)
$ 125,000 payable in 20 years (February 2006)
$ 200,000 payable in 25 years (February 2011)
$ 350,000 payable in 30 years (February 2016)
$ 450,000 payable in 35 years (February 2021)
$ 600,000 payable in 40 years (February 2026)
$ 900,000 payable in 45 years (February 2031)
$1,200,000 payable in 50 years (February 2035)
$2,000,000 payable in 55 years (February 2041)

A true and correct copy of the unexecuted Cessna Settlement Agreement is attached hereto as Exhibit A.

17. The original executed version of the Cessna Settlement Agreement was retained by the Defendant and/or Cessna.

18. Plaintiff entered into the Cessna Settlement Agreement providing for the Periodic Payments upon the advice of the Defendant and for the purpose of and with the expectation of providing for his future needs, taking into account the seriousness and lasting nature of his injuries sustained in the plane crash and his young age.

19. Pursuant to Plaintiff's earlier settlement agreement with Grand Canyon Airways, Plaintiff received an additional $150,000 cash settlement from Grand Canyon Airways upon the execution of the Cessna Settlement Agreement.

20. As part of the Cessna Settlement Agreement, Cessna purchased an annuity policy from Executive Life Insurance Company of New York (ELNY) for the payment of the Periodic Payments to Plaintiff and assigned all of its obligations under the Cessna Settlement Agreement to ELNY (the "Annuity").

21. The assignment of Cessna's obligations under the Cessna Settlement Agreement was approved by Plaintiff upon the advice of the Defendant.

22. In entering into the Cessna Settlement Agreement, Plaintiff was assured by the Defendant that the Periodic Payments were "guaranteed."

23. In fact, the Recapitulation/Distribution sheet provided to Plaintiff by the Defendant states that under the Cessna Settlement Agreement "All Periodic Payments *Guaranteed* to Eric N. Yerkes By The Cessna Aircraft Company" and "The Total Payout, Assuming a 59 Year Life-Expectancy is $6,668,000.00 of Which All but the Sum of $468,000 is

Guaranteed by Cessna." A true and correct copy of the Recapitulation/Distribution sheet is attached hereto as Exhibit B. (Emphasis added).

24. In calculating the contingency fee due to the Defendant for its services, the Recapitulation/Distribution sheet calculates the present value of the "Guaranteed" Periodic Payments to be $275,000.

25. Accordingly, the distribution of cash settlement funds was as follows:

Funds received from Grand Canyon Airways	$150,000.00
Funds received from Cessna	$125,000.00
Present value of the Periodic Payments	$275,000.00
Total cash and present value of Periodic Payments	$550,000.00
Advanced expenses of Begam Marks & Traulsen	($ 16,575.73)
Advanced expenses of Anapol Weiss	($ 2,637.50)
Net remaining	$530,786.77
Less 40% attorney's fee	($212,314.71)
Actual lump-sum settlement funds available	$275,000.00
Total expenditures and attorney's fees	($231,527.94)
Net payment to Plaintiff	$ 43,472.06

26. In other words, the Defendant was paid a 40% contingency fee not just from the lump-sum cash proceeds of the settlement agreements with Grand Canyon Airways and Cessna but also from the then present value of the Periodic Payments that the Defendant represented to Plaintiff were "guaranteed."

27. As a result, from the $275,000.00 lump-sum payments, Plaintiff only received $43,472.06 while the remaining $231,527.94 was paid to the Defendant for its services.

28. Despite the representation of the Defendant that the Periodic Payments were "Guaranteed," later events revealed this representation to be false.

29. On April 11, 1991, the Executive Life Insurance Company, the parent company of ELNY, was placed in conservation under the California Insurance Commissioner.

30. Less than two weeks later, on April 23, 1991, ELNY entered into rehabilitation under Section 7402 of the New York Insurance Law pursuant to an order of the New York Supreme Court, Nassau County.

31. Nonetheless, the Periodic Payments continued as scheduled.

32. On April 16, 2012, the New York Supreme Court, Nassau County entered an order finding ELNY to be insolvent and approved a restructuring agreement of ELNY pursuant to which ELNY's assets were liquidated and restructured.

33. On August 8, 2013, the restructuring agreement of ELNY closed and the Guaranty Association Benefits Company ("GABC") took over the assets of ELNY, including Plaintiff's annuity purchased by Cessna to fund the Periodic Payments provided for in the Cessna Settlement Agreement.

34. Plaintiff received the Periodic Payments consisting of monthly payments of $1,000 and the lump sum payments every five years as scheduled until the transfer of ELNY's assets to GABC on August 8, 2013.

35. By letter dated October 13, 2014, Plaintiff was informed by GABC that the Periodic Payments were reduced by 56.46% to a total of just 43.54% of their original amount effective August 8, 2013. A true and correct copy of the GABC Letter is attached hereto as Exhibit C.

36. The reduction of the Periodic Payments was part of the restructuring agreement of ELNY that was approved by the New York Supreme Court, Nassau County, thus leaving Plaintiff with no recourse against ELNY or GABC.

37. As a result, the $1,000 monthly payments that Plaintiff was advised by the Defendant were guaranteed for life have been reduced to $435.40 per month and the lump sum

payments Plaintiff was to receive every five years were equally reduced to just 43.54% of their promised amount.

38. As the Cessna Settlement Agreement and Annuity called for the payments to be made to Plaintiff at his residence in New Jersey, Plaintiff has suffered the harm from the reduction in payments in New Jersey.

39. After learning about the reduction, Plaintiff spoke with the Defendant about the reduction. One of the Defendant's attorneys, Joel Feldman, advised Plaintiff that Plaintiff would have to sue Cessna for the reduction. Attorney Feldman further advised Plaintiff that the Defendant would not represent him in a lawsuit against Cessna relating to the reduction.

40. On September 23, 2014, based on the Defendant's advice, Plaintiff retained other counsel and brought an action against Cessna in the United States District Court for the District Court of New Jersey No. 1:14-cv-05925-RMB-JS for breach of contract and unjust enrichment relating to the reduction of the Periodic Payments promised as part of the Cessna Settlement Agreement. A true and correct copy of the proposed Third Amended Complaint against Cessna is attached hereto as Exhibit D.

41. Plaintiff's claims against Cessna were dismissed by the court on March 24, 2016, however, upon a finding that the Cessna Settlement Agreement and Cessna's purchase of the annuity from ELNY fully released Cessna from all obligations for the Periodic Payments. A true and correct copy of the March 24, 2016 Order and Opinion is attached hereto as Exhibit E.

42. The ruling that Plaintiff had released Cessna from all liability is in contradiction with the representations made to Plaintiff by the Defendant that the Periodic Payments were guaranteed by Cessna.

43. The ruling is also in contradiction with the Recapitulation/Distribution statement provided to Plaintiff by the Defendant that repeatedly stated that the Periodic Payments were guaranteed by Cessna.

44. In entering into the Cessna Settlement Agreement, Plaintiff reasonably relied upon the professional advice and explanation of the Defendant, his legal counsel.

45. Plaintiff would not have entered into the Cessna Settlement Agreement but for the representations of the Defendant that the Periodic Payments were guaranteed.

46. The Defendant breached its duty owed to Plaintiff, its client, by misrepresenting to Plaintiff that the Periodic Payments were guaranteed by Cessna and in so doing acted negligently and failed to exercise the level of skill, care, and knowledge commonly exercised by members of the legal profession.

47. Unknown to Plaintiff until the District Court of New Jersey's March 24, 2016 Order, in actuality, the Periodic Payments were in no way guaranteed by Cessna or anyone else and depended entirely upon the financial health and stability of ELNY. At no time did the Defendant disclose that the funding of the Periodic Payments by means of the Annuity was not guaranteed.

48. As a result of the Defendant's breach of its duty owed to Plaintiff and failure to inform Plaintiff of the true nature of the Cessna Settlement Agreement and the Annuity, Plaintiff is no longer receiving the full benefit of the Cessna Settlement Agreement that the Defendant encouraged him to enter into and which Plaintiff believed he would receive.

49. Plaintiff's damages over the life of the Cessna Settlement Agreement total in excess of $3,000,000.

50. Plaintiff did not discover the Defendant's negligence and his damages from the Defendant's malpractice did not become fixed until the March 24, 2016 Order that dismissed his claims against Cessna that the Defendant advised him to bring.

COUNT I
Legal Malpractice

51. Plaintiff hereby incorporates by reference the foregoing paragraphs as if the same had been set forth at length herein.

52. In serving as legal counsel for Plaintiff in his action against Cessna and Grand Canyon Airways, including in the negotiation and preparation of the Cessna Settlement Agreement, the Defendant owed Plaintiff a duty of care.

53. The Defendant breached the duty owed to Plaintiff by misrepresenting that the Periodic Payments were guaranteed by Cessna and, by means of assignment, the Annuity.

54. In actuality, the Cessna Settlement Agreement contained a complete release of Cessna for the Periodic Payments as was determined by the March 24, 2016 Order of the District Court for the District of New Jersey, and, rather than being guaranteed as represented by the Defendant, the Periodic Payments were entirely dependent on the financial health and stability of ELNY.

55. In misrepresenting to Plaintiff that the Periodic Payments were guaranteed, the Defendant acted negligently and without the level of skill, care, and knowledge ordinarily exercised by members of the legal profession.

56. The Defendant knew or should have known that the Periodic Payments were not guaranteed by Cessna or anyone else and were in actuality entirely dependent on the financial health and stability of ELNY.

57. Plaintiff reasonably relied upon the professional services, representations, and advice of his legal counsel, the Defendant, in agreeing to and executing the Cessna Settlement Agreement.

58. Were it not for the Defendant's false representations that the Periodic Payments were guaranteed, Plaintiff would not have entered into the Cessna Settlement Agreement.

59. The Defendant committed legal malpractice by misrepresenting to Plaintiff that the Periodic Payments were guaranteed and by advising him to sign the Cessna Settlement Agreement on the basis that the payments were guaranteed.

60. Plaintiff has sustained actual and ascertainable damages as a result of the Defendant's negligence and malpractice.

61. The amount of Plaintiff's damages totals in excess of $3,000,000.00.

62. Plaintiff is entitled to attorney's fees incurred in connection with bringing this action.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendant for an amount in excess of $75,000.00, plus interest and costs, attorney's fees, and such other relief as the Court may deem appropriate and proper.

COUNT II
Unjust Enrichment

63. Plaintiff hereby incorporates by reference the foregoing paragraphs as if the same had been set forth at length herein.

64. The Defendant was paid a contingency fee of 40% of all settlement funds including lump sum cash payments and future Periodic Payments received or to be received by Plaintiff in his action against Cessna and Grand Canyon Airways for the Defendant's legal services.

65. In calculating the amount of the contingency fee, the parties calculated the then present value of the Periodic Payments to be $275,000.00.

66. As a result, the Defendant was paid a contingency fee in the amount of $212,314.71, exclusive of costs and expenses, from the $275,000.00 in lump sum cash payments received in 1986 while Plaintiff retained only $43,472.06 from the cash settlement proceeds.

67. The distribution and amounts paid to the Defendant were based on the Defendant's false representation that the Periodic Payments were guaranteed and would ultimately be received by Plaintiff.

68. As was recently discovered by Plaintiff, the Periodic Payments were not guaranteed at all and the payments have been reduced to just 43.54% of their intended amount.

69. The Defendant thus received a contingency fee based on the false assumption of future payments that have not and will not be received by Plaintiff.

70. Accordingly, the Defendant has been enriched at the expense of Plaintiff by receiving a contingency fee payment in excess of the amount rightfully owed due to the Defendant's misrepresentation that the Periodic Payments were guaranteed.

71. The excess payment to the Defendant is without justification.

72. Justice can only be served by the just payment to Plaintiff for the enrichment the Defendant received at Plaintiff's detriment.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendant for an amount in excess of $75,000.00, plus interest and costs, attorney's fees, and such other relief as the Court may deem appropriate and proper.

COUNT III
Breach of Contract

73. Plaintiff hereby incorporates by reference the foregoing paragraphs as if the same had been set forth at length herein.

74. Plaintiff and Defendant entered into an agreement under the terms of which the Defendant promised to fairly and adequately represent the Plaintiff in exchange for a legal fee.

75. Plaintiff kept his promise by paying the $212,314.71 fee, exclusive of costs and expenses.

76. Defendant, however, failed to keep its promise by failing to represent the Plaintiff fairly and adequately.

77. As a result of the Defendant's breach, Plaintiff did not receive a fair and adequate compensation relating to injury sustained from the plane crash.

WHEREFORE, Plaintiff demands judgment in his favor and against the Defendant for an amount in excess of $75,000.00, plus interest and costs, attorney's fees, and such other relief as the Court may deem appropriate and proper.

JURY DEMANDED

Plaintiff hereby demands a trial by a jury of twelve (12) on all issues so triable.

KANG HAGGERTY & FETBROYT LLC

By: ____________________
Edward T. Kang
Attorney for Plaintiff

Dated: April 12, 2017

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I hereby certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

KANG HAGGERTY & FETBROYT LLC

By: ______________________________
Edward T. Kang
Attorney for Plaintiff

Dated: April 12, 2017